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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,775	01/16/2004	Maria Masae Kulas	CJK-14	8139
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CHARLES J. KULAS 651 ORIZABA AVE. SAN FRANCISCO, CA 94132				
EXAMINER HAYES, KRISTEN C				
ART UNIT		PAPER NUMBER		
3643				
NOTIFICATION DATE		DELIVERY MODE		
10/08/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/759,775

Applicant(s)

KULAS, MARIA MASAE

Examiner

Kristen C. Hayes

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 15, 16 and 20-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 13, 14 and 15 and 16 claim the stakes being held by the apparatus and apparatus being integral or removably coupled with the supporting stake. The stake is apart of the apparatus. The wording of the claim suggests the apparatus and stake are separate devices.
4. Claims 20-22 depend from canceled claim 11.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
6. Claims 12-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Hampton US 2,335,274.
7. Regarding claim 12, Hampton discloses an apparatus for encircling vegetation with a windscreen, the apparatus comprising first and second stakes (19) wherein each stake comprises a single linear elongated rod (11) having a protruding end, wherein a single elongated flexible sheet (13) is directly connected to each elongated rod along a length of each elongated rod, wherein the first and second stakes are perpendicular to a direction of elongation

of the flexible sheet and are separated by at least a portion of the flexible sheet along the direction of elongation of the flexible sheet, first and second attachment portions (26, 37), a third attachment portion (element 37 near element 12) coupled to the first and second attachment portions, and a supporting stake (14).

8. Regarding claim 13, Hampton further discloses the first and second stakes being held by the apparatus (as best understood) in a position above and substantially parallel to the supporting stake (Hampton, Figure 1). Claim 13 contains functional language. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

9. Regarding claim 14, Hampton further discloses the first and second stakes being held by the apparatus (as best understood) substantially in-line with a length of the supporting stake (Hampton, Figure 1). Claim 14 contains functional language. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

10. Regarding claim 15, Hampton further discloses (as best understood) the apparatus being integral with the supporting stake (Hampton, Figures 1-2).

11. Regarding claim 16, Hampton further discloses (as best understood) the apparatus being removably coupled to the supporting stake (Hampton, Figures 1-2).

12. Regarding claim 17, Hampton further discloses (as best understood) the attachment portion includes a hole (in that 37 is a tube) for receiving an end of a stake.

13. Regarding claim 18, Hampton further discloses the apparatus being rolled in the elongated direction of the flexible sheet. Claim 18 contains functional language. A recitation of

the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

14. Regarding claim 19, Hampton further discloses the roll being unrolled and cut along a line transverse to the direction of elongation of the flexible sheet during a dispensing operation to result in the structure of claim 1. Claim 19 is considered a product-by-process claim. A product-by-process limitation adds no patentable distinction to the claim, and is unpatentable if the claimed product is the same as a product of the prior art. *In re Thorpe*, 227 USPQ 964, 966.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hampton US 2,335,274.

17. Regarding claims 20-22, Hampton discloses the device of claim 11 (as best understood) but does not disclose the elongated rod being directly connected to the single elongated flexible sheet by adhesive, a staple or a nail. Hampton does disclose the elongated rod being connected to the sheet by sewing. However, it would have been an obvious to one of ordinary skill in the art at the time of the invention to substitute the connection of Hampton with the equivalent connection of an adhesive, a staple or nail as a simple substitution of one known

element for another to obtain predictable results, depending on the connector available to the user.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Hayes whose telephone number is 571-270-3093. The examiner can normally be reached on Monday-Thursday, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571)272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCH
30 September 2008

Peter Poon
Examiner
Art Unit 3643

/Peter M. Poon/
Supervisory Patent Examiner, Art Unit 3643